

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TERESA STODDART, )  
Plaintiff, ) No. CV-09-292-JPH  
v. ) ORDER GRANTING DEFENDANT'S  
MICHAEL J. ASTRUE, Commissioner ) MOTION FOR SUMMARY JUDGMENT  
of Social Security, )  
Defendant. )  
\_\_\_\_\_  
)

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on August 6, 2010 (Ct. Rec. 11, 14). Attorney Rebecca M. Coufal represents plaintiff; Special Assistant United States Attorney Willy M. Le represents the Commissioner of Social Security (Commissioner). The parties have consented to proceed before a magistrate judge (Ct. Rec. 3). On July 19, 2010, plaintiff filed a reply (Ct. Rec. 16). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 14) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 11).

**JURISDICTION**

Plaintiff protectively applied for disability insurance benefits (DIB) and supplemental security income (SSI) in February 2005 and August 2006, respectively, alleging onset as of January

1, 2005, due to nerve damage, right eye blindness, right-sided  
2 paralysis and pain, migraine headaches, panic attacks, and  
3 depression (Tr. 28, 36, 99-101, 102-107, 119). The applications  
4 were denied initially and on reconsideration (Tr. 78-81, 83-86).  
5 At a hearing before Administrative Law Judge (ALJ) R. S. Chester  
6 on June 18, 2008, plaintiff, represented by counsel, and a  
7 vocational expert testified (Tr. 31-73). On July 21, 2008, the ALJ  
8 issued an unfavorable decision (Tr. 13-28). The Appeals Council  
9 denied review on July 16, 2009 (Tr. 1-3). Therefore, the ALJ's  
10 decision became the final decision of the Commissioner, which is  
11 appealable to the district court pursuant to 42 U.S.C. § 405(g).  
12 Plaintiff filed this action for judicial review pursuant to 42  
13 U.S.C. § 405(g) on September 21, 2009 (Ct. Rec. 1).

#### 14 **STATEMENT OF FACTS**

15 The facts have been presented in the administrative hearing  
16 transcripts, the ALJ's decision, the briefs of the parties, and  
17 are summarized here where relevant.

18 Plaintiff was 39 years old at the hearing (Tr. 36-37). She is  
19 unmarried and lives with her thirteen year old son (Tr. 38).  
20 Plaintiff earned her GED and completed a two year college degree  
21 in business management (Tr. 39). Ms. Stoddart has worked as a home  
22 attendant/care giver (Tr. 39-41, 66), a retail manager for eight  
23 years (Tr. 42-43, 66), and a sales clerk (Tr. 44-45, 66). She last  
24 worked in 2005 (Tr. 46). Plaintiff testified she drives (Tr. 38).  
25 Since being assaulted in 2005, Ms. Stoddart suffers pain, memory  
26 loss, right side paralysis with incontinence, swelling, falling,  
27 and leg discoloration (Tr. 47-49). She is blind in her right eye.  
28 Two to three times a week plaintiff suffers migraine headaches but

1 prescribed medication "gets rid of it within a short time" (Tr.  
2 50). She receives no mental health treatment but has a daily care  
3 giver. Plaintiff drinks alcohol 2-3 times a year (Tr. 54). She  
4 plays with her dog, reads, drives, vacuums with assistance, and  
5 cooks and washes dishes while seated. Plaintiff goes to church  
6 occasionally but cannot go out alone due to panic attacks and fear  
7 of falling (Tr. 38, 54-56, 58-59, 61).

#### 8                   **SEQUENTIAL EVALUATION PROCESS**

9                   The Social Security Act (the "Act") defines "disability"  
10 as the "inability to engage in any substantial gainful activity by  
11 reason of any medically determinable physical or mental impairment  
12 which can be expected to result in death or which has lasted or  
13 can be expected to last for a continuous period of not less than  
14 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act  
15 also provides that a Plaintiff shall be determined to be under a  
16 disability only if any impairments are of such severity that a  
17 plaintiff is not only unable to do previous work but cannot,  
18 considering plaintiff's age, education and work experiences,  
19 engage in any other substantial gainful work which exists in the  
20 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
21 Thus, the definition of disability consists of both medical and  
22 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
23 (9<sup>th</sup> Cir. 2001).

24                   The Commissioner has established a five-step sequential  
25 evaluation process for determining whether a person is disabled.  
26 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
27 is engaged in substantial gainful activities. If so, benefits are  
28 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,

1 the decision maker proceeds to step two, which determines whether  
2 plaintiff has a medically severe impairment or combination of  
3 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

4 If plaintiff does not have a severe impairment or combination  
5 of impairments, the disability claim is denied. If the impairment  
6 is severe, the evaluation proceeds to the third step, which  
7 compares plaintiff's impairment with a number of listed  
8 impairments acknowledged by the Commissioner to be so severe as to  
9 preclude substantial gainful activity. 20 C.F.R. §§  
10 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
11 App. 1. If the impairment meets or equals one of the listed  
12 impairments, plaintiff is conclusively presumed to be disabled.  
13 If the impairment is not one conclusively presumed to be  
14 disabling, the evaluation proceeds to the fourth step, which  
15 determines whether the impairment prevents plaintiff from  
16 performing work which was performed in the past. If a plaintiff is  
17 able to perform previous work, that Plaintiff is deemed not  
18 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At  
19 this step, plaintiff's residual functional capacity ("RFC")  
20 assessment is considered. If plaintiff cannot perform this work,  
21 the fifth and final step in the process determines whether  
22 plaintiff is able to perform other work in the national economy in  
23 view of plaintiff's residual functional capacity, age, education  
24 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
25 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

26 The initial burden of proof rests upon plaintiff to establish  
27 a *prima facie* case of entitlement to disability benefits.

28 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*

1 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
2 met once plaintiff establishes that a physical or mental  
3 impairment prevents the performance of previous work. The burden  
4 then shifts, at step five, to the Commissioner to show that (1)  
5 plaintiff can perform other substantial gainful activity and (2) a  
6 "significant number of jobs exist in the national economy" which  
7 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
8 Cir. 1984).

9 **STANDARD OF REVIEW**

10 Congress has provided a limited scope of judicial review of a  
11 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
12 the Commissioner's decision, made through an ALJ, when the  
13 determination is not based on legal error and is supported by  
14 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>  
15 Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).  
16 "The [Commissioner's] determination that a plaintiff is not  
17 disabled will be upheld if the findings of fact are supported by  
18 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup>  
19 Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is  
20 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,  
21 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
22 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
23 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
24 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
25 evidence as a reasonable mind might accept as adequate to support  
26 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
27 (citations omitted). "[S]uch inferences and conclusions as the  
28 [Commissioner] may reasonably draw from the evidence" will also be

1 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On  
 2 review, the Court considers the record as a whole, not just the  
 3 evidence supporting the decision of the Commissioner. *Weetman v.*  
 4 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v.*  
 5 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

6 It is the role of the trier of fact, not this Court, to  
 7 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
 8 evidence supports more than one rational interpretation, the Court  
 9 may not substitute its judgment for that of the Commissioner.  
 10 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
 11 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by substantial  
 12 evidence will still be set aside if the proper legal standards  
 13 were not applied in weighing the evidence and making the decision.  
 14 *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432,  
 15 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to  
 16 support the administrative findings, or if there is conflicting  
 17 evidence that will support a finding of either disability or  
 18 nondisability, the finding of the Commissioner is conclusive.  
 19 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987).

#### 20 **ALJ'S FINDINGS**

21 At the onset ALJ Chester found plaintiff was insured through  
 22 March 31, 2010 (Tr. 15). At step one he found Ms. Stoddart has not  
 23 engaged in substantial gainful activity since onset on January 1,  
 24 2005 (Tr. 15). At steps two and three, he found plaintiff suffers  
 25 from right eye blindness, headaches, panic disorder, and pain  
 26 disorder, impairments that are severe but which do not meet or  
 27 medically equal a Listed impairment (Tr. 15, 20-21). The ALJ found  
 28 plaintiff less than completely credible (Tr. 24-25). At step four,

1 relying on the VE, he found she is able to perform her past  
 2 relevant work as a home attendant (Tr. 27, 68-69), a determination  
 3 that made step five moot. Accordingly, ALJ Chester found plaintiff  
 4 is not disabled as defined by the Social Security Act (Tr. 28).

## 5 ISSUES

6 Plaintiff contends the Commissioner erred at step two by  
 7 failing to find fibromyalgia and patellofemoral syndrome severe  
 8 impairments. She contends the ALJ improperly weighed Dr.  
 9 Ridgeway's opinion and failed to fully develop the record. Last,  
 10 she contends he erred assessing credibility (Ct. Rec. 12 at 12-  
 11 22). The Commissioner responds the ALJ appropriately weighed the  
 12 evidence, including Dr. Ridgeway's opinion and plaintiff's  
 13 credibility, and properly developed the record. He asks the Court  
 14 to affirm (Ct. Rec. 15 at 2).

## 15 DISCUSSION

### 16 A. Weighing medical evidence - standards

17 In social security proceedings, the claimant must prove the  
 18 existence of a physical or mental impairment by providing medical  
 19 evidence consisting of signs, symptoms, and laboratory findings;  
 20 the claimant's own statement of symptoms alone will not suffice.  
 21 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated  
 22 on the basis of a medically determinable impairment which can be  
 23 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once  
 24 medical evidence of an underlying impairment has been shown,  
 25 medical findings are not required to support the alleged severity  
 26 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cr.  
 27 1991).

28 A treating physician's opinion is given special weight

1 because of familiarity with the claimant and the claimant's  
2 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir.  
3 1989). However, the treating physician's opinion is not  
4 "necessarily conclusive as to either a physical condition or the  
5 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,  
6 751 (9<sup>th</sup> Cir. 1989)(citations omitted). More weight is given to a  
7 treating physician than an examining physician. *Lester v. Cater*,  
8 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996). Correspondingly, more weight is  
9 given to the opinions of treating and examining physicians than to  
10 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592  
11 (9<sup>th</sup> Cir. 2004). If the treating or examining physician's opinions  
12 are not contradicted, they can be rejected only with clear and  
13 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the  
14 ALJ may reject an opinion if he states specific, legitimate  
15 reasons that are supported by substantial evidence. See *Flaten v.*  
16 *Secretary of Health and Human Serv.*, 44 F.3d 1435, 1463 (9<sup>th</sup> Cir.  
17 1995).

18 In addition to the testimony of a nonexamining medical  
19 advisor, the ALJ must have other evidence to support a decision to  
20 reject the opinion of a treating physician, such as laboratory  
21 test results, contrary reports from examining physicians, and  
22 testimony from the claimant that was inconsistent with the  
23 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,  
24 751-52 (9<sup>th</sup> Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9<sup>th</sup>  
25 Cir. 1995).

26 **B. Step two**

27 In social security proceedings, the claimant must prove the  
28 existence of a physical or mental impairment by providing medical

1 evidence consisting of signs, symptoms, and laboratory findings;  
2 the claimant's own statement of symptoms alone will not suffice.  
3 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated  
4 on the basis of a medically determinable impairment which can be  
5 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once  
6 medical evidence of an underlying impairment has been shown,  
7 medical findings are not required to support the alleged severity  
8 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cir.  
9 1991).

10 An impairment or combination of impairments may be found "not  
11 severe only if the evidence establishes a slight abnormality that  
12 has no more than a minimal effect on an individual's ability to  
13 work." *Webb. Barnhart*, 433 F.3d 683, 686-687 (9<sup>th</sup> Cir. 2005)  
14 (citing *Smolen v. Chater*, 80 F.3d 1273, 1290 (9<sup>th</sup> Cir. 1996); see  
15 also *Yuckert v. Bowen*, 841 F.2d 303, 306 (9<sup>th</sup> Cir. 1988)). If an  
16 adjudicator is unable to determine clearly the effect of an  
17 impairment or combination of impairments on the individual's  
18 ability to do basic work activities, the sequential evaluation  
19 should not end with the not severe evaluation step. S.S.R. No. 85-  
20 28 (1985). Step two, then, is "a de minimus screening device  
21 [used] to dispose of groundless claims," *Smolen*, 80 F.3d at 1290,  
22 and an ALJ may find that a claimant lacks a medically severe  
23 impairment or combination of impairments only when his conclusion  
24 is "clearly established by medical evidence." S.S.R. 85-28. The  
25 question on review is whether the ALJ had substantial evidence to  
26 find that the medical evidence clearly established that the  
27 claimant did not have a medically severe impairment or combination  
28 of impairments. *Webb*, 433 F.3d at 687; see also *Yuckert*, 841 F.2d

1 at 306.

2 Plaintiff argues at step two the ALJ should have found she  
3 suffers from the severe impairments of fibromyalgia and  
4 patellofemoral syndrome (Ct. Rec. 12 at 12-14; 16 at 1-3).  
5 According to the Commissioner, the ALJ was not required to find  
6 these conditions severe because they have not been properly  
7 diagnosed (Ct. Rec. 15 at 7-9).

8 Margaret Collyer, ARNP, opined in July of 2006 plaintiff  
9 suffers patellofemoral syndrome: she "has patellofemoral syndrome  
10 at the knees" (Tr. 260). [Ms. Collyer reminded plaintiff they  
11 treated her for it nearly ten years earlier but plaintiff did not  
12 remember it (Tr. 258).] Nurses are non-acceptable medical sources  
13 for diagnostic purposes. 20 C.F.R. §§ 404.1513(a), 416.913(a). The  
14 ALJ correctly omitted patellofemoral syndrome as a severe  
15 impairment at step two because it was not diagnosed by an  
16 acceptable medical source. Citing SSR 06-03p, the Commissioner  
17 accurately points out because non-acceptable sources, such as  
18 nurses, may not properly diagnose impairments, their information  
19 cannot establish the existence of a medically determinable  
20 impairment as required at step two (Ct. Rec. 15 at 8-9).

21 Plaintiff similarly contends the ALJ should have included  
22 fibromyalgia as a severe impairment at step two. The Commissioner  
23 responds because fibromyalgia, like patellofemoral syndrome, was  
24 not formally diagnosed by an acceptable medical source, the ALJ  
25 correctly omitted it as a severe condition at step two (Ct. Rec.  
26 15 at 7-8).

27 Examining neurologist David Henzler, M.D. opined it "seems  
28 like she has the syndrome of fibromyalgia," and prescribed

1 antidepresant medication he knew was used to treat fibromyalgia,  
2 but did not formally diagnose the condition. He opined there was a  
3 psychosomatic aspect to plaintiff's complaints and referred her  
4 back to her treatment provider for follow up (Tr. 180-181).  
5 Treating physician Daniel Stoop, M.D., found multiple trigger  
6 point areas along the spine of the neck, thoracic spine and lower  
7 back. He diagnosed myofascial pain, not fibromyalgia (Tr. 311,  
8 313, 317). No rheumatologist has diagnosed fibromyalgia. A  
9 treating physician's opinion is entitled to greater weight than  
10 that of an examining physician. The Commissioner is correct.  
11 Unless an acceptable medical source formally diagnoses a medically  
12 determinable impairment, it is non-severe as defined by the SSA.

13 Plaintiff contends the ALJ erred by disposing of her claim at  
14 step two. She is mistaken. The ALJ found at step four plaintiff is  
15 not disabled.

#### 16 **C. Credibility**

17 To aid in weighing the conflicting medical evidence, the ALJ  
18 evaluated plaintiff's credibility and found her less than fully  
19 credible (Tr. 24-26). Credibility determinations bear on  
20 evaluations of medical evidence when an ALJ is presented with  
21 conflicting medical opinions or inconsistency between a claimant's  
22 subjective complaints and diagnosed condition. *Webb v. Barnhart*,  
23 433 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

24 It is the province of the ALJ to make credibility  
25 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
26 1995). However, the ALJ's findings must be supported by specific  
27 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
28 1990). Once the claimant produces medical evidence of an

1 underlying medical impairment, the ALJ may not discredit testimony  
2 as to the severity of an impairment because it is unsupported by  
3 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
4 1998). Absent affirmative evidence of malingering, the ALJ's  
5 reasons for rejecting the claimant's testimony must be "clear and  
6 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).

7 "General findings are insufficient: rather the ALJ must  
8 identify what testimony is not credible and what evidence  
9 undermines the claimant's complaints." *Lester*, 81 F.3d at 834;  
10 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

11 The ALJ relied on plaintiff's inconsistent statements (Tr.  
12 24-26). Plaintiff told many treatment providers she does not drink  
13 or abuse substances (Tr. 179, 229, 232, 236, 250). The ALJ  
14 observes plaintiff (1) gave a blood alcohol test of .105 in August  
15 2007; (2) tested positive for cocaine and gave a blood alcohol  
16 test of .059 in September 2007; and (3) a month later, in October  
17 of 2007, admitted she drank one beer but smelled strongly of  
18 alcohol (Tr. 16, 25 referring to Exhibit 6F, Tr. 234, 236-238).  
19 Inconsistent statements diminish credibility. *Thomas v. Barnhart*,  
20 278 F.3d 947, 958-959 (9<sup>th</sup> Cir. 2002).

21 The ALJ observes many of plaintiff's allegations are  
22 unsupported by the medical evidence (Tr. 15-20, 25-26). He notes  
23 Ms. Stoddart indicates she suffered severe impairments following  
24 an assault on May 31, 2005, yet onset is alleged almost six months  
25 earlier. No medical evidence supports impairment prior to May 31,  
26 2005. Similarly, plaintiff has complained of right eye blindness  
27 and impaired left eye vision, yet the only relevant medical  
28 records are an exam in July 2007 and records dated September and

1 November of 2007 (Exhibit 8F) indicating Ms. Stoddart failed to  
2 keep both appointments (Tr. 246-248). Despite many neurological  
3 complaints, the ALJ observes Dr. Henzler's neurologic exam in  
4 September 2006 yielded no significant neurologic findings (Tr. 26;  
5 181).

6 The ALJ may properly consider complaints unsupported by  
7 medical evidence as long as it is not the sole factor used to  
8 determine credibility. *Bunnell v. Sullivan*, 947 F.2d. 341, 345  
9 (9<sup>th</sup> Cir. 1991).

10 The ALJ relied on plaintiff's drug seeking behavior and  
11 inconsistent statements about substance abuse when he found her  
12 less than fully credible (Tr. 25-26). He observes plaintiff  
13 specifically asked for prescription narcotic pain medication and  
14 changed treatment providers after they stopped prescribing  
15 narcotics (Tr. 26, 193). As noted, plaintiff inconsistently  
16 described substance use (Tr. 25-26). These factors diminish  
17 credibility. *Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9<sup>th</sup> Cir.  
18 1999).

19 The ALJ considered plaintiff's noncompliance with medical  
20 treatment, including her failure to keep appointments on several  
21 occasions and repeated failure to obtain neurological testing as  
22 directed (Tr. 16, 26, 247-248). Marelda Abney, ARNP stopped  
23 treating plaintiff in January 2007 because she repeatedly failed  
24 to keep appointments (Tr. 188). [As the ALJ points out, plaintiff  
25 stopped going to Ms. Abney when the nurse stopped prescribing  
26 narcotics in November 2006 (Tr. 19; 193)]. Plaintiff repeatedly  
27 failed to obtain neurologic testing (Tr. 181, 183, 201, 249). She  
28 stopped taking prozac for two months in 2007 (Tr. 249).

1 Unexplained failure to comply with medical treatment diminishes  
2 credibility. *Fair v. Bowen*, 885 F.2d 597, 603-604 (9<sup>th</sup> Cir. 1989).

3 Notably, plaintiff was helping someone move when she broke  
4 her foot in October 2007 (Tr. 241).

5 Plaintiff claims the ALJ erred assessing credibility (Ct.  
6 Rec. 12 at 16-20). Because the ALJ's reasons are clear,  
7 convincing, and supported by substantial evidence, the argument  
8 fails.

9 **D. Examining psychologist**

10 ALJ Chester considered the contradicted opinion of examining  
11 psychologist Pamela Ridgeway, Ph.D., following her May 12, 2008,  
12 examination (Tr. 16-17, referring to Tr. 327-335).

13 Dr. Ridgeway diagnosed pain disorder associated with both  
14 psychological factors and a general medical condition, panic  
15 disorder with agoraphobia, depressive disorder NOS, and cognitive  
16 disorder NOS (Tr. 331). As the ALJ observes, Dr. Ridgeway assessed  
17 a GAF of 50-55 indicating moderate symptoms or difficulty in  
18 social, occupational or school functioning (Tr. 17, Tr. 331). She  
19 assessed moderate limitations in six areas and a marked limitation  
20 in the ability to perform under stress when speed and sustained  
21 attention are "make or break" aspects of the job (Tr. 333-335), a  
22 form apparently provided by plaintiff's attorney. Several areas of  
23 moderate limitation include (1) performing within a schedule,  
24 maintaining attendance and punctuality; (2) getting along with co-  
25 workers, and (3) completing a normal work day or work week (Tr.  
26 333-334). Dr. Ridgeway assessed a moderate limitation in the  
27 ability to respond appropriately to work place changes, noting  
28 plaintiff "reportedly becomes anxious when faced with unexpected

events" (Tr. 334).

Dr. Ridgeway's assessed limitation in the ability to respond to change appropriately is clearly based on plaintiff's unreliable self-report. An ALJ need not credit opinions based on a claimant's discredited report. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir. 2005).

The ALJ observes

claimant's attorney referred the claimant to Pamela Ridgeway, Ph.D., psychologist, shortly before the hearing for a psychological consultation. On May 12, 2008, the claimant presented for the examination with a history of being in the ICU after an assault by her ex-boyfriend in May 2005 and being hospitalized a second time after being strangled with a telephone cord. Other than past individual and group counseling for domestic violence [lasting one year], the claimant reported no mental health treatment[.]

. . . [She] alleged having panic attacks and needing to avoid others and pressure situations and reported experiencing depressive symptoms after breaking her left ankle in October 2007.

. . . The claimant was adamant she did not go shopping alone due to fear of panic attacks. . . memory abilities were found to be in the low average to borderline range . . .

Based on the above, the undersigned finds severe physical and mental impairments of right eye blindness, headaches and a panic disorder based on the medical evidence of record and in viewing the evidence in the light most favorable to the claimant, also finds a pain disorder of recent diagnosis and of barely enough evidence to be deemed a medically determinable impairment.

(Tr. 16-17).

Dr. Ridgeway notes records show plaintiff was not in the ICU after being assaulted in October 2005 as she alleged (Tr. 327-328). The ALJ observes plaintiff has made several other statements to health care professionals that have not been supported by the medical evidence. These include plaintiff reporting she was hospitalized for being strangled at some point

1 after the initial assault, a claim not supported by the medical  
2 records, and reporting she went "to the emergency room for  
3 concussions after collapsing," also unsupported by the record (Tr.  
4 25).

5 Despite Dr. Ridgeway's assessed marked and moderate  
6 limitations, plaintiff's test results reveal only mild to moderate  
7 depression and anxiety (Tr. 332). The ALJ accurately observes  
8 plaintiff has stated throughout the record she was capable of most  
9 daily activities. When Ms. Stoddart alleged problems, they were  
10 due to physical complaints. Plaintiff rarely alleged problems due  
11 to any mental impairment (Tr. 21).

12 At his neurologic exam in September 2006, David Henzler,  
13 M.D., opined plaintiff's remote and recent memory, attention span,  
14 and concentration are all normal (Tr. 180). This evidence  
15 contradicts Dr. Ridgeway's opinions.

16 The ALJ notes plaintiff sought treatment infrequently, a  
17 specific legitimate reason to discredit Dr. Ridgeway's assessed  
18 marked and moderate limitations. See *Burch v. Barnhart*, 400 F.3d  
19 676 (9<sup>th</sup> Cir. 2005); *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9<sup>th</sup>  
20 Cir. 2005).

21 The ALJ assessed a single mental limitation: plaintiff's  
22 public contact should be limited.

23 To the extent the ALJ rejected the contradicted opinions of  
24 some of the professionals, his reasons are legitimate, specific,  
25 and supported by substantial evidence in the record. See *Lester v.*  
26 *Chater*, 81 F.3d 821, 830-831 (9<sup>th</sup> Cir. 1995) (the ALJ must make  
27 findings setting forth specific, legitimate reasons for rejecting  
28 the treating or examining physician's contradicted opinion).

The ALJ is responsible for reviewing the evidence and

1 resolving conflicts or ambiguities in testimony. *Magallanes v.*  
2 *Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). It is the role of the  
3 trier of fact, not this court, to resolve conflicts in evidence.  
4 *Richardson*, 402 U.S. at 400. The court has a limited role in  
5 determining whether the ALJ's decision is supported by substantial  
6 evidence and may not substitute its own judgment for that of the  
7 ALJ, even if it might justifiably have reached a different result  
8 upon de novo review. 42 U.S.C. § 405 (g).

9 **E. Duty to develop record**

10 Plaintiff alleges the ALJ should have sent Ms. Stoddart to a  
11 consultative examination for possible fibromyalgia, and to a  
12 neuropsychological evaluation in light of Dr. Ridgeway's  
13 evaluation (Ct. Rec. 12 at 14-16). Citing *Mayes v. Massanari*, 276  
14 F.3d 453, 459-460 (9<sup>th</sup> Cir. 2001), the Commissioner asserts the  
15 duty to further develop the record is triggered only when the  
16 record is ambiguous or inadequate for determining disability,  
17 situations not present in this case (Ct. Rec. 15 at 9-10).

18 The Commissioner is correct. The record is adequate and  
19 sufficiently non-ambiguous to determine disability.

20 **E. Hypothetical**

21 Plaintiff alleges the ALJ should have included in his  
22 hypothetical the limitations assessed by Dr. Ridgeway (Ct. Rec. 12  
23 at 20-22). As noted, the ALJ properly weighed her opinion and the  
24 other evidence. His RFC is supported by the record and free of  
error.

25 The record supports ALJ Chester's step two and credibility  
26 determinations. His assessment of the other evidence is based on  
27 substantial evidence and free of legal error.

28 **CONCLUSION**

Having reviewed the record and the ALJ's conclusions, this  
court finds that the ALJ's decision is free of legal error and  
supported by substantial evidence..

IT IS ORDERED:

1. Defendant's Motion for Summary Judgment (**Ct. Rec. 14**) is  
**GRANTED**.

2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 11**) is  
**DENIED**.

The District Court Executive is directed to file this Order,  
provide copies to counsel for the parties, **enter judgment in favor  
of Defendant**, and **CLOSE** the file.

DATED this 20th day of August, 2010.

s/ James P. Hutton  
JAMES P. HUTTON  
UNITED STATES MAGISTRATE JUDGE